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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MARK J. HUNT,)	
)	
Plaintiff,)	
v.)	Case No. 04-4047-JAR
)	
FRANCHESKA LAMB aka)	
FRANCHESKA HUNT,)	
)	
Defendant.)	
_____)	

MEMORANDUM ORDER OF DISMISSAL

This action commenced on May 7, 2004, when Mark J. Hunt filed a Notice of Removal (Doc. 1) of an action pending in the District Court of Shawnee County, Kansas styled *In the Matter of the Marriage of: Francheska Lamb (f.k.a. Hunt), Petitioner and Mark Joel Hunt, Respondent*, Case No. 94D1144. Attached to the Notice of Removal was a “Temporary Exparte [sic] Residential Custody Order” ordering that temporary residency of the parties’ minor children be with Francheska Lamb until further order of the court.

After removing the state action to this court, Mark J. Hunt filed a motion for leave to proceed *in forma pauperis* and a motion to appoint counsel. Magistrate Judge K. Gary Sebelius entered an Order (Doc. 6) denying the motion to appoint counsel and granting the motion to proceed *in forma pauperis*. In the order, Judge Sebelius observed

while self-styled defendant Mark J. Hunt has attempted to commence this action by filing a notice of removal purporting to remove an ongoing case from the District Court of Shawnee County, Kansas, in reality this action is more in the nature of a collateral

attack on the earlier state court action itself, than a continuation of the same case in federal court. As such, the court concludes that in order for this action to proceed it would be most efficient to have it restyled to reflect Mr. Hunt as the plaintiff, with the defendant or defendants being any persons or entities from whom Mr. Hunt seeks redress.

Consequently, Judge Sebelius further ordered Mark J. Hunt to file a Complaint on or before September 15, 2004, reciting his specific claims, identifying the defendants and identifying the relief he seeks. Mark J. Hunt acting pro se, filed an Amended Complaint (Doc. 8) on September 7, 2004.

A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than pleadings drafted by lawyers.¹ Thus, if a pro se plaintiff's complaint can reasonably be read "to state a valid claim on which the plaintiff could prevail, it [the court] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements."² However, it is not "the proper function of the district court to assume the role of advocate for the pro se litigant."³ For that reason, the court should not "construct arguments or theories for the plaintiff in the absence of any discussion of those issues,"⁴ nor should it "supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on plaintiff's behalf."⁵

Construing the Amended Complaint with the above standards in mind, this Court notes that

¹*Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

²*Id.*

³*Id.*

⁴*Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991).

⁵*Whitney v. State of New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997).

Magistrate Judge Sebelius’s observations were on point. The Amended Complaint is in the nature of a collateral attack on the state court’s rulings in child custody and child support matters. In fact, the Amended Complaint prays for relief in the form of “retribution of injunctive relief in compliance with K.S.A. 60-1607(2)(b) from his former spouse and former supervisor in the form of restoration of residential custody of both of the minor children born to him and Francheska Lamb, during their marriage,” as well as sanctions against his ex-wife Francheska Lamb and her current husband, for wages Hunt claims to have lost as a consequence of the Lambs’ conspiratorial acts. Hunt claims that the Lambs have: made “trumped up allegations” that he had committed a crime; made allegations that caused him to lose his job; kidnaped the minor children in order to obtain an ex parte residential custody order; and denied him access to his minor children for several months. Hunt also complains that the Shawnee County District Judge presiding over the child custody and support matters will not allow any of this evidence in the court room and that court personnel have engaged in a “conspiracy of retaliation” along with the Lambs.⁶

DISMISSAL UNDER 28 U.S.C. § 1915(e)

Section 1915 applies to actions, such as this, that are filed *in forma pauperis*. Subsection (e)(2) provides for dismissal of such actions if the court determines that “(B) the action or appeal . . . (ii) fails to state a claim on which relief may be granted.”⁷ Section 1915(e)(2)(B)(ii) squarely applies to

⁶On September 20, 2004, Hunt filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 9), seeking to enjoin an October 6, 2004 hearing in Shawnee County District Court on a motion to modify income withholding order.

⁷ 28 U.S.C. § 1915(e)(2)(B)(ii).

this case. This Court simply lacks jurisdiction to review a state court's decisions.⁸ Furthermore, the *Younger* abstention doctrine precludes this Court from enjoining pending state court proceedings, as Hunt requests in the Amended Complaint and in his Motion for Temporary Restraining Order. As the Supreme Court stated in the seminal *Younger v. Harris*⁹ case,

Younger abstention dictates that federal courts not interfere with state court proceedings by granting equitable relief—such as injunctions of important state proceedings or declaratory judgments regarding constitutional issues in those proceedings—when such relief could adequately be sought before the state court.¹⁰

Younger abstention “is the exception, not the rule.”¹¹

In determining whether *Younger* abstention is appropriate, a court considers whether: “(1) there is an ongoing state criminal, civil, or administrative proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies.”¹² Once these three conditions are met, *Younger* abstention is non-discretionary and, absent extraordinary circumstances, a district court is required to abstain.¹³

⁸Under the *Rooker-Feldman* doctrine, federal district courts, being courts of only original jurisdiction, cannot exercise appellate jurisdiction over state court proceedings. *Klein v. University of Kansas Medical Center*, 975 F.Supp. 1408, 1413 (D. Kan. 1997) (citations omitted).

⁹401 U.S. 37 (1971).

¹⁰*Rienhardt v. Kelly*, 164 F.3d 1296, 1302 (10th Cir. 1999).

¹¹*Joseph A., ex rel. Corrine Wolfe v. Ingram*, 275 F.3d 1253, 1267 (10th Cir. 2002) (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992)).

¹²*Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003) (quoting *Amanatulla v. Colorado Bd. of Medical Examiners*, 187 F.3d 1160, 1163 (10th Cir. 1999) (internal quotations omitted)).

¹³*Id.* (citing *Seneca-Cayuga Tribe of Oklahoma v. State of Okl. ex rel. Thompson*, 874 F.2d 709, 711 (10th Cir. 1989)).

There are pending matters relating to child custody and support in the Shawnee County District Court. These are matters involving important state interests; in fact there is no federal jurisdiction over such domestic relations matters; these are matters of state law. Furthermore, to the extent Hunt's complaint can be read to include civil rights claims against the Lambs, those claims can be heard in the state court, particularly since all claims seem to be related to the ongoing dispute over child custody and support. Hunt seems to claim that Francheska Lamb, who is a police detective, and her current husband, John Lamb, who is "Director of the Parole Division for the Northern and Eastern sections of the State of Kansas" violated his civil rights in making false statements and "trumping up allegations" about him. Yet he also states that they have "stepped outside" their official positions in taking these actions.

Apparently on the basis of these same alleged acts, the Amended Complaint also accuses the Lambs of retaliation, pursuant to 18 U.S.C. §1513 and 18 U.S.C. §1514. But Hunt has no private right of action under §1513, a federal criminal statute concerning retaliation against a witness, victim or informant in a federal criminal case. Nor does he have a private right of action under §1514, which provides for the government to obtain a restraining order prohibiting harassment of a victim or witness in a federal criminal case.

The Court notes that the *Younger* abstention doctrine does not apply "in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown."¹⁴

¹⁴*Perez v. Ledesma*, 401 U.S. 82, 85 (1971); see *Younger*, 401 U.S. at 54 (creating exception on "showing of bad faith, harassment, or any other unusual circumstances that would call for equitable relief."); *Phelps v. Hamilton*, 59 F.3d 1058, 1066-68 (10th Cir. 1995) (analyzing exceptions).

But Hunt's allegations of false accusations, civil rights violations and retaliation simply do not meet ". . . the plaintiff's 'heavy burden' to overcome the bar of *Younger* abstention by setting forth more than mere allegations of bad faith or harassment."¹⁵ On the record before this Court, there is no evidence that any exceptions to the *Younger* doctrine apply. Thus, *Younger* requires dismissal of this action.¹⁶

IT IS THEREFORE ORDERED BY THE COURT that this case is **DISMISSED** *sua sponte*, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS SO ORDERED.

Dated this 24th day of September 2004.

S/ Julie A. Robinson
Julie A. Robinson
United States District Judge

¹⁵*Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir. 1997) (quoting *Phelps*, 59 F.3d at 1066).

¹⁶Francheska Lamb filed a Motion to Dismiss and for Summary Judgment (Doc. 11) on September 21, 2004, raising additional grounds for dismissal; Hunt has not yet responded. Because the Court finds dismissal of this case appropriate under 28 U.S.C. § 1915(e), it does not reach the merits of Lamb's motion to dismiss.